

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR
a/k/a "Akhbar Farhad"
a/k/a "Akhbar Farnad"
a/k/a "Ahmed Muhammed Khali"

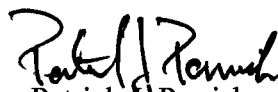
ORDER

**Government Request
for a Continuance**

P-011

The Government's unopposed request for a continuance until 20 May 2009 is granted.

So Ordered this 21st day of January 2009.


Patrick J. Parrish
COL, JA
Military Judge

UNITED STATES OF AMERICA

v.

OMAR AHMED KHADR

GOVERNMENT MOTION

REQUEST FOR 120-DAY
CONTINUANCE IN THE INTERESTS
OF JUSTICE

20 January 2009

1. **Timeliness:** This motion is timely filed.
2. **Relief Requested:** In the interests of justice, and at the direction of the President of the United States and the Secretary of Defense, the Government respectfully requests the Military Commission to grant a continuance of the proceedings in the above-captioned case until 20 May 2009.¹
3. **Overview:** In order to permit the newly inaugurated President and his Administration time to review the military commissions process, generally, and the cases currently pending before military commissions, specifically, the Secretary of Defense has, by order of the President, directed the Chief Prosecutor to seek continuances of 120 days in all pending cases.
4. **Burden and Persuasion:** As the moving party, the Government bears the burden of persuasion. *See* RMC 905(c).
5. **Facts:**
 - a. On 19 January 2009, the Defense requested a continuance of proceedings until 9 March 2009.
 - b. On 20 January 2009, Barack H. Obama took the oath of office as President of the United States. As such, President Obama is the Commander-in-Chief of the United States Armed Forces. The Honorable Robert Gates continues to serve as the Secretary of Defense.
 - c. On 20 January 2009, following the inauguration of President Obama, and by order of the President, the Secretary of Defense directed the Chief Prosecutor of the Office of Military Commissions, *inter alia*, to seek continuances of 120 days in any case that had been referred to military commission.²

¹ The Government will be requesting a continuance until on or about 20 May 2009 in all pending military commissions cases.

² Both the President's order and the Secretary's direction to the Chief Prosecutor are oral as of the filing of this motion. The Prosecution expects to receive a copy of a Memorandum from the White House Counsel relaying the

d. The Secretary of Defense issued his order to the Chief Prosecutor in order to provide the Administration sufficient time to conduct a review of detainees currently held at Guantánamo Bay, Cuba, to evaluate the cases of detainees not approved for release or transfer to determine whether prosecution may be warranted for any offenses those detainees may have committed, and to determine which forum best suits any future prosecution.

6. Argument:

a. Rule for Military Commission 707(b)(4)(E)(i) authorizes the military judge of a military commission to grant a continuance of the proceedings in a pending case if the interests of justice are served by such action and outweigh the best interests of both the public and the accused in a prompt trial of the accused. R.M.C. 707(b)(4)(E)(i), MMC (2007).

b. The requested continuance is in the interests of justice, as it will permit the newly inaugurated President and his Administration to undertake a thorough review of both the pending cases and the military commissions process generally.

c. The interests of justice served by granting the requested continuance outweigh the interests of both the public and the accused in a prompt trial. While both the public and the accused have an interest in a prompt trial of this case, granting a continuance of the proceedings is affirmatively in the interests of both the accused and the public, as the Administration's review of the commissions process and its pending cases may result in changes that would (1) render moot any proceedings conducted during the pendency of the review, (2) necessitate re-litigation of issues, or (3) produce legal consequences affecting the options available to the Administration following its review. Further, changes in the military commissions procedures that could result from a review of the commissions process might inure to the benefit of the accused, and a continuance would accommodate the defense's desire for a continuance until 9 March 2009, as expressed by their 19 January 2009 request for such a continuance.

7. Conclusion: For the foregoing reasons, the military commission should grant a continuance of further proceedings in the above-captioned case until 20 May 2009, and adopt the attached Findings of Fact, Conclusions of Law and Order.

8. Oral Argument: The Government does not request oral argument, but is prepared to argue should the commission find it helpful.

9. Witnesses and Evidence: No witnesses or evidence are necessary to decide this motion.

10. Certificate of Conference: The Government has not conferred with the Defense, however notes that on 19 January 2009, the Defense requested a continuance of proceedings until 9 March 2009.

President's order to the Secretary and a written order memorializing the Secretary's order to the Chief Prosecutor within the next two days. The Government will file these documents with the military commission at its earliest opportunity.

11. Attachments:

A. Proposed Findings of Fact and Conclusions of Law.

12. Submitted by:

//s//

Jeffrey D. Groharing
Major, U.S. Marine Corps
Prosecutor

Keith A. Petty
Captain, U.S. Army
Assistant Prosecutor

John F. Murphy
Assistant Prosecutor
Assistant U.S. Attorney

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Defense Response

to

Government Request for
120-Day Continuance

21 January 2009

1. **Timeliness:** This response is filed within the timeframe orally ordered by the Military Judge on 20 January 2009.
2. **Response:** The defense does not oppose the government's motion. The defense concurs with the government's proposed findings of fact and conclusions of law.

/s/

William C. Kuebler
LCDR, JAGC, USN
Detailed Defense Counsel

Rebecca S. Snyder
Assistant Detailed Defense Counsel

Walter Ruiz,
LCDR, JAGC, USN
Assistant Detailed Defense Counsel

Michel Paradis
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